

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: BANK OF AMERICA
WAGE AND HOUR EMPLOYMENT
PRACTICES LITIGATION**

No: 10-MD-2138-JWL

This Order Relates To All Cases

PRACTICE AND PROCEDURE ORDER NO. 2

It is hereby **ORDERED** as follows:

Organization of Counsel

1. The Court creates the organization of counsel set forth below for the purpose of assuring the effective, efficient, expeditious, and economical conduct of the litigation.

2. The law firm of Stueve Siegel Hanson LLP is appointed as liaison counsel for plaintiffs. Plaintiffs' liaison counsel is designated as the counsel for all plaintiffs in all cases upon whom all notices, orders, pleadings, motions, discovery, and memoranda shall be served. Plaintiffs' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on plaintiffs' behalf, (b) prepare and transmit copies of such orders and notices on plaintiffs' behalf, and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall: (d) maintain complete files with copies of all documents served upon them and make such files available to all plaintiffs' counsel, and (e) maintain and make available to all counsel and the court an up-to-date service list.

3. The law firm of Stueve Siegel Hanson LLP, the Law Office of Donelon, P.C. and the law firm of Marlin & Saltzman are appointed as co-lead counsel for all plaintiffs, including opt-in plaintiffs, in the actions assigned to this Court by the Panel on Multidistrict Litigation

including any actions designated as tag-along actions. Plaintiffs' co-lead counsel shall have the following duties during all phases of this litigation:

- a. to organize and supervise the efforts of plaintiffs' counsel in a manner to ensure that the pretrial and trial preparation for the plaintiffs is conducted effectively, efficiently, expeditiously, and economically;
- b. to delegate work responsibilities and monitor the activities of plaintiffs' counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;
- c. to speak on behalf of plaintiffs at all court conferences and hearings;
- d. to initiate and conduct discussions and negotiations with counsel for defendant¹ on all matters, including settlement;
- e. to determine the position of plaintiffs on all matters arising during the litigation and present such position orally and/or in writing to the court and opposing parties;
- f. to consult with and employ experts, as necessary, for plaintiffs;
- g. to coordinate the initiation of and conduct discovery on behalf of plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure, including the preparation of interrogatories and requests for production of documents, the organization and review of documents produced by defendant and non-parties, and the examination of witnesses via deposition;

¹ Defendant Bank of America, N.A. is a defendant in each of the cases transferred by the MDL panel for purposes of this MDL proceeding. In addition, the *Zhou* case names an individual defendant and the *Paulino* case lists ten "doe" defendants. In this and all future orders, the court will refer to all defendants as either "Defendant Bank of America, N.A." or simply "defendant."

h. to receive and initiate communication with the Court and the Clerk of Court, including receiving orders, notices, correspondence and telephone calls;

i. to be the primary contact for all communications between plaintiffs and defendant;

j. to perform such other duties as are necessary in connection with the prosecution of this litigation;

k. to coordinate the preparation and presentation of all of plaintiffs' claims and coordinate all proceedings;

l. to encourage full cooperation and efficiency among all plaintiffs' counsel;

m. to assess plaintiffs' counsel for the costs of the litigation; and

n. to consult with Plaintiffs' Committees as necessary to fulfill their obligations as co-lead counsel.

4. Plaintiffs' counsel shall also be organized into three separate committees ("Plaintiffs' Committees"). Co-lead counsel shall be deemed a member of each of Plaintiffs' Committees and shall have the ability to add members as it deems appropriate for the just and efficient resolution of this matter. Plaintiffs' Committees shall be charged with consulting with lead counsel in an efficient and economical manner about the groups of plaintiffs represented by each respective committee. Plaintiffs' Committees shall consist of the following separate committees and comprised of the following members, in addition to lead counsel:

a. A Nationwide Retail Banking Committee: this committee will consist of one representative firm from each of the *E. Franco*, *Carrero*, and *Fortner* actions and will focus on the wage and hour claims of the non-exempt retail banking center employees nationwide, excluding California.

b. A California Retail Banking Committee: this committee will include the Sturdevant Law Firm and will focus on the California state wage and hour claims brought by plaintiffs who worked at retail banking centers.

c. A Call Center Committee: this committee will include Brown & Associates, L.L.C. and will focus on the claims of individuals employed at defendant Bank of America, N.A.'s call center facilities nationwide.

5. All plaintiffs' counsel shall keep contemporaneous records of their time and expenses devoted to this matter. Those records shall reflect the date the legal service was rendered or expenses incurred, the nature of the service or expense, and number of hours consumed by the service or the amount of the expense. These records for the preceding month shall be submitted in summary form by the end of each month to Stueve Siegel Hanson LLP. No plaintiffs' counsel shall incur an expense to be reimbursed from the plaintiffs' assessment fund in excess of \$500 without first obtaining the consent of one of plaintiffs' co-lead counsel. Failure to comply with this rule may render the expenses non-reimbursable, at the discretion of lead counsel.

6. Any discussions of a settlement that would affect any claims brought in this litigation, other than claims of an individual plaintiff or class member, must be conducted by plaintiffs' lead counsel. Any proposed settlement that resolves, in whole or in part, the claims brought in this action shall first be subject to review and approval by the Court in this litigation.

Service of this Order

7. Plaintiffs' liaison counsel shall promptly serve a copy of this order by overnight delivery service, facsimile, or other electronic means on counsel for plaintiffs in each related

action that has not been consolidated in this proceeding to the extent that plaintiffs' liaison counsel is aware of any such action(s).

8. When an action that properly belongs as a part of *In re: Bank of America Wage and Hour Employment Practices Litigation* is hereinafter filed in the District of Kansas or transferred here from another Court, the Clerk of this Court shall:

- a. file a copy of this order in the separate file of such action;
- b. make an appropriate entry on the master docket sheet;
- c. mail a copy of this order to the attorneys for the plaintiff in the newly filed or transferred case; and
- d. upon the first appearance of any new defendant, mail a copy of this order to the attorneys for the defendant in such newly filed or transferred cases.

IT IS SO ORDERED this 14th day of May, 2010.

s/ John W. Lungstrum
Honorable John W. Lungstrum
United States District Judge